

**SKAGIT
DRAINAGE AND FISH INITIATIVE**

DRAINAGE MAINTENANCE AGREEMENT

By and Between the

**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
and
SKAGIT COUNTY DIKING DISTRICT #3**

This Agreement represents a commitment by the **WASHINGTON DEPARTMENT OF FISH AND WILDLIFE** and **SKAGIT COUNTY DIKING DISTRICT #3** to acknowledge the critical interests and needs of each Party with regards to fish protection and the maintenance of drainage infrastructure within the established boundaries of said District. It also represents an acknowledgement by the **SKAGIT RIVER SYSTEM COOPERATIVE (SRSC)**, representing the **Swinomish Indian Tribal Community** and the **Sauk Suiattle Indian Tribe** (collectively referred to as the Tribes), of a shared need to develop and maintain effective levels of communication and cooperation in recognition of the vital roles of agriculture and natural resources in sustaining the customs, culture and economic viability of Skagit County, its citizens and the Tribes and their members.

PART I: PURPOSE AND INTENT

This Agreement is predicated on the belief that the statutory duties, powers and responsibilities vested in the duly elected Commissioners of **Skagit County Diking District #3** under Title 85 RCW and the statutory resource protection responsibilities of the **Washington Department of Fish and Wildlife** under Title 77 (RCW 77.55) reflect shared interests and needs of the State of Washington. The Parties to this agreement recognize and accept a clear and compelling need exists to reconcile these statutory responsibilities in a way that is both respectful and cognizant of each other's rights, obligations and interests.

The purpose and intent of this Agreement is to provide a mechanism through which each Party may achieve certainty in addressing their needs regarding agricultural drainage and fish protection. The specific goals and objectives of this Agreement are to:

- 1) Provide a framework to cooperatively develop a detailed Drainage Maintenance Plan to ensure the immediate and long terms interests and needs of each Party are identified and provided for with regards to drainage infrastructure behind tide gates and pump stations.

PART I: PURPOSE AND INTENT (continued)

- 2) Defuse and avoid conflicts typically associated with sub-tidal drainage maintenance activities and fish protection efforts within the Skagit and Samish River deltas.
- 3) Provide a mechanism to resolve issues regarding jurisdictional authority involving drainage and fish protection.
- 4) Establish and sustain open and constructive levels of communication and cooperation based on trust and mutual respect between each Party.
- 5) Contribute to improved working relationships and collaborative partnerships between each Party, other interested stakeholder groups and local, state, federal and tribal governments.

PART II: PARTIES TO THIS AGREEMENT

The parties to this individual Agreement are the **WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW)** and **SKAGIT COUNTY DIKING DISTRICT #3**, which controls lands historically subject to tidal influence within the Skagit River delta, hereafter referred to as “**WDFW**” or “**DD #3**”, respectively. This Agreement is limited to the drainage maintenance activities that are the sole responsibility of **DD #3** and will not be applicable to other activities performed by **DD #3**, or to individual landowners or any other party that is not a signatory to this specific Drainage Maintenance Agreement.

PART III: FRAMEWORK FOR DEVELOPMENT AND IMPLEMENTATION OF THIS DRAINAGE MAINTENANCE AGREEMENT

The primary component of this Drainage Maintenance Agreement is a Drainage Maintenance Plan (see Addendum B), developed collaboratively and cooperatively by the duly elected Commissioners of **DD #3** and **WDFW**, and in consultation with the **Skagit River System Cooperative (SRSC)**, consistent with the provisions of a **Memorandum of Understanding (MOU)** between the **Washington Department of Fish and Wildlife** and the **Western Washington Agricultural Association**, dated February 18, 2005, as follows:

PART III – (A): Classification of Watercourses

The following definitions apply to those watercourses occurring within **DD #3**, consistent with the aforementioned MOU and as further identified within the attached Drainage Maintenance Plan:

Natural Watercourses (*Color Code: Blue*): Watercourses with headwaters that follow and/or replace a historic natural watercourse that has been altered, channelized, relocated, and/or constrained by dikes and that do not have flow control structures (tide gates, pump stations) at their confluence with marine waters. (*Examples: Skagit River, Samish River*)

Managed Watercourses with Headwaters¹ (*Color Code: Green*): Watercourses with headwaters that follow and/or replace a historic natural watercourse that has been significantly channelized, relocated, and/or constrained by dikes and that have flow control structures (tide gates, pump stations) at their confluence with marine waters. (*Examples: Edison Slough, No Name Slough, Big Indian Slough, Big Ditch, Hill Ditch*)

Managed Watercourses without Headwaters¹ (*Color Code: Magenta*): Watercourses without headwaters that follow and/or replace a historic natural watercourse that has been significantly channelized, relocated and/or constrained by dikes and that have flow control structures (tide gates, pump stations) at their confluence with marine waters. (*Examples: Wiley Slough, Dry Slough, Brown Slough, Hall Slough, Dodge Slough, Sullivan Slough, Joe Leary Slough*)

Artificial Watercourses (*Color Code: Yellow*): Watercourses without headwaters that are wholly built by humans and that do not follow or replace a historic natural watercourse, and are designed to convey water from local surface areas or subsurface drains for the purpose of removing excess water in order to improve conditions for agriculture.

PART III – (B): Drainage Maintenance Activities

The following types of drainage maintenance activities are considered typical of work necessary to routinely maintain watercourses that comprise the drainage infrastructure within the Skagit and Samish River deltas. The Parties to this Agreement recognize that new maintenance activities and techniques may arise and may, by mutual consent, be incorporated into previously agreed upon Drainage Maintenance Agreements and related Drainage Maintenance Plans.

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PART III – (B): Drainage Maintenance Activities (continued)

- Trash Racks
 - Maintenance/repair
 - Debris removal
 - Replacement
- Pump Facilities
 - Maintenance/repair
 - Debris removal
 - Replacement
- Culverts
 - Maintenance/repair
 - Debris removal
 - Replacement/Installation
- Flood Gates
 - Maintenance/repair
 - Debris removal
 - Replacement
- Tide Gates
 - Maintenance/repair
 - Debris removal
 - Replacement
- Channel In-water Bucket Mowing
 - Channel maintenance
- Channel Out-of-Water Mowing
 - Channel Maintenance
- Dredging
 - Channel maintenance
 - Debris removal
- Bridges
 - Installation
 - Replacement
 - Maintenance/repair
 - Debris removal

PART III – (B): Drainage Maintenance Activities (continued)

For purposes of further clarifying established maintenance practices governed and controlled by the elected Commissioners of **DD #3**, the construction and use of “V” ditches are considered the responsibility of individual landowners and, as such, are not addressed within the scope and intent of this District Agreement. Furthermore, the construction and use of water retention structures for irrigation purposes are also outside the scope of this Agreement.

PART III – (C): Best Management Practices (BMP’s)

It is the intent of this Agreement to identify and prescribe appropriate BMP’s for drainage maintenance activities for each category of watercourse located within the boundaries of **DD #3**, based on the need to convey water and protect fish and related habitats.

This Agreement seeks to ensure that these BMP’s are recognized and accepted as being reasonable, necessary and prudent for meeting their stipulated purpose and are not intended to constitute an infringement or impediment with regards to the ability of the duly elected Commissioners of **DD #3** to exercise their lawful duties and responsibilities under Title 85 RCW or the ability of **WDFW** to exercise its lawful duties and responsibilities under the provisions of Title 77 RCW.

Best Management Practices (BMP’s) have been developed for use in conjunction with each of the drainage maintenance activities and watercourse categories outlined below. A detailed description of individual BMP’s prescribed for each of the following maintenance activities and watercourses within **DD #3** is included as a separate addendum to this Agreement (see Addendum A).

- General
- Trash Racks
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Pump Facilities
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse

PART III – (C): Best Management Practices (continued)

- Culverts
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Flood Gates
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Channel In-Water Bucket Mowing
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Channel Out-of Water Mowing
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Dredging
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse
- Bridges
 - Managed Watercourse With Headwaters
 - Managed Watercourse Without Headwaters
 - Artificial Watercourse

In some instances, BMP's associated with the activities and watercourses listed above will warrant modification for use within a individual Drainage Maintenance Agreement based on unique circumstances that exist within a given District (See Addendum B, Drainage Maintenance Plan, Section D). Deviation from the BMP's identified pursuant to this MOU requires the mutual consent of both Parties and will be reflected in writing as a modification to an Agreement and conditions associated with any related Hydraulic Project Approvals

PART III – (D): Resource Protection Measures

The Parties to this Agreement recognize and accept the need for safeguards and protocols to ensure the protection of fish and fish habitat in conjunction with maintenance of drainage infrastructure within **DD #3**. It is acknowledged and agreed that the use of Hydraulic Project Approvals (HPA's), as provided for in RCW 77.55, constitutes the appropriate tool for implementing the Best Management Practices identified pursuant to this Agreement and as conditions of HPA's issued for drainage maintenance within **DD #3**. It is further recognized that the use of BMP's alone shall constitute the appropriate tool for implementation of this Agreement in those watercourses classified as artificial.

The Washington Department of Fish and Wildlife will issue Hydraulic Project Approval's incorporating the Best Management Practices identified in the Drainage Maintenance Plan for **DD #3** (see Addendum C) as resource protection measures for the following maintenance and watercourse categories:

- Trash Racks
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's
- Pump Facilities
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse - Voluntary Compliance – General BMP's
- Culverts
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's
- Flood Gates
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse– Voluntary Compliance – General BMP's

PART III – (D): Resource Protection Measures (continued)

- Tide Gates
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – Individual HPA
 - Managed Watercourse Without Headwaters – Individual HPA
 - Artificial Watercourse – Individual HPA
- Channel In-Water Bucket Mowing
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's
- Channel Out-of-Water Mowing
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's
- Dredging
 - Natural Watercourses – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's
- Bridges
 - Natural Watercourse – Individual HPA
 - Managed Watercourse With Headwaters – General 5 Year HPA
 - Managed Watercourse Without Headwaters – General 5 Year HPA
 - Artificial Watercourse – Voluntary Compliance – General BMP's

For purposes of implementing this Drainage Maintenance Agreement, General Five-Year HPA's will be issued and shall apply only to the repair and maintenance of existing drainage infrastructure. The construction of new drainage infrastructure within **DD #3** will require a individual site specific HPA, consistent with the general provisions of RCW 77.55, as well as any other local, state and federal requirements that may apply.

The Washington Department of Fish and Wildlife agrees to expedite renewal of the above referenced General Five-Year Hydraulic Project Approvals developed in association with this Agreement.

PART III – (E): Habitat Improvement Projects (Mitigation Measures)

The Parties to this Agreement acknowledge that some drainage maintenance activities may have varying degrees of direct and/or indirect impacts to fish and fish related habitat. For purposes of implementing this Agreement between WDFW and **DD #3**, the goal and intent of each Party is to offset direct and/or indirect impacts to fish and fish habitat by incorporating BMP's as conditions associated with General or Individual HPA's issued for maintenance activities provided for as part of the Drainage Maintenance Plan for **DD #3** (see Addendum C).

In those instances where, during the development of a District Drainage Maintenance Plan, a maintenance activity within a District is determined by the Parties, in consultation with SRSC, to warrant the need for additional measures to offset otherwise unavoidable impacts to fish and/or fish habitat, WDFW and the Commissioners of **DD #3** will work collaboratively and cooperatively to identify and implement appropriate and acceptable Habitat Improvement Projects.

The goals, objectives and obligations necessary to implement mutually agreed upon projects are clearly identified in the attached Drainage Maintenance Plan for **DD #3** (see Addendum B). At established five-year periods, progress toward implementation of projects identified within the attached District Plan will be evaluated and considered during the revision and development of subsequent plans and in re-issuance of related permits. Failure to support or implement identified projects consistent with the written parameters established as part of this District Drainage Maintenance Agreement and Plan may constitute grounds for voiding this Agreement.

Projects Benefiting Both Drainage and Fish: The highest priority in identifying and implementing projects associated with an agreed-upon need to mitigate and/or offset direct or indirect harm to fish and fish habitat associated with drainage maintenance activities pursuant to this Agreement will be projects that provide benefits for both drainage and fish. In such instances, **DD #3** agrees to commit resources (land, equipment, time, funding) to assist in implementing the prioritized habitat improvement projects identified within this Drainage Maintenance Agreement and Plan in cooperation with **WDFW**, and in consultation with **SRSC**.

PART III – (E): Habitat Improvement Projects (Mitigation Measures) (continued)

DD #3 herein agrees to partner with **WDFW** and work in consultation with **SRSC** and other mutually acceptable entities to identify, pursue and obtain additional funding through available sources (grants, etc) sufficient to implement those habitat improvement projects identified within this District Agreement and Plan, and to do so within a mutually agreed upon timeframe for completion.

Projects Providing Benefits Primarily for Fish: In instances where habitat improvement projects identified within this District Drainage Maintenance Agreement and Plan are determined to be beneficial primarily for fish, **WDFW**, local **Tribes** and interested entities other than the District agree to identify, pursue and acquire funding sufficient for implementation. The goals, objectives and obligations necessary to implement each of these mutually agreed upon projects are clearly identified within the attached Drainage Maintenance Plan (see Addendum B).

At established five-year periods, progress toward implementation of projects identified in this District Agreement and Plan will be reviewed, evaluated and considered in the revision and development of subsequent plans and reissuance of related permits. Failure to support implementation of identified projects consistent with the written parameters established as part of this District Drainage Maintenance Agreement and Plan may constitute grounds for voiding this Agreement.

PART III – (F): Emergency Drainage Maintenance

The Parties to this Agreement recognize and acknowledge that exigent circumstances will arise as a result of weather or other factors influencing stream flows and the need to convey water. Emergency drainage maintenance activities may typically be the same as the routine maintenance activities identified elsewhere in this Agreement and Plan but may need to occur outside of designated work periods and/or require the use of action steps that differ or deviate from the BMP's prescribed in a General HPA issued for routine drainage maintenance activities by **DD #3**. In the event of a drainage maintenance emergency, the following protocols will apply:

Natural Watercourses: Emergency approval by the Washington Department of Fish and Wildlife is required for all emergency repair activities occurring in Natural Watercourses identified in a District Drainage Maintenance Agreement.

PART III – (F): Emergency Drainage Maintenance (continued)

Managed Watercourses With Headwaters: Emergency notification to the Washington Department of Fish and Wildlife is required only in circumstances where emergency repair activities in a Managed Watercourse with Headwaters identified in a District Drainage Maintenance Agreement deviate from the timing restrictions and provisions of a General HPA provided pursuant to said agreement.

Managed Watercourses Without Headwaters: Emergency notification to the Washington Department of Fish and Wildlife is required only in circumstances where emergency repair activities in a Managed Watercourse without Headwaters identified in a District Drainage Maintenance Agreement deviates from the timing restrictions and provisions of a General HPA provided pursuant to said Agreement.

Artificial Watercourses: Notification to the Washington Department of Fish and Wildlife is not required for emergency repair activities in artificial watercourses identified in a District Drainage Maintenance Agreement.

Upon receipt of emergency notification, **WDFW** agrees to issue a verbal emergency maintenance approval, with the understanding that the proposed work is necessary to address emergency drainage conditions. **DD #3** agrees to have a representative set up an on-site meeting with the Area Habitat Biologist designated within this District Maintenance Agreement (see Addendum D) as soon as possible, but not more than 30 days after work is completed. The purpose of this on-site meeting will be to determine if additional measures will be necessary to restore fish habitat that may have been damaged as a result of an emergency action undertaken by the District.

PART III – (G): Drainage Maintenance Activity Reporting

DD #3 agrees to prepare and submit an annual report summarizing maintenance activities for the preceding calendar year using a format and timeline to be developed jointly between the WDFW and WWAA. The annual report will be forwarded to the Western Washington Agricultural Association and WWAA will provide a copy of the report to WDFW and the SRSC for review and comment no later than February 1 of each year.

PART III – (H): Annual Drainage and Fish Review Conference

The Parties to this Agreement agree to meet annually in February of each year at a time and place to be determined and established through mutual consent between **WDFW** and **WWAA**. The purpose of this annual meeting will be to review and discuss drainage maintenance activities planned to occur during the coming year and to identify any relevant issues that may warrant the attention of the Parties in keeping with the spirit and intent of maintaining open and constructive channels of communication. Participation at this meeting will also be open to **SRSC**. Scheduled meetings may be modified or deferred by mutual consent.

PART IV: DRAINAGE MAINTENANCE PLANS

The Parties to this Agreement agree to work cooperatively, and in consultation with **SRSC**, under the direction of the duly elected Commissioners of **DD #3** to gather existing and pertinent information for the development of a District Drainage Maintenance Plan consistent with the following template. This template is not intended to be exhaustive or all-inclusive and is meant to serve as a guide for each Party in identifying relevant details for consideration in developing a Drainage Maintenance Plan as the primary component of this District Drainage Maintenance Agreement.

Drainage Maintenance Plan – Template

- A. Drainage District Overview
 - 1. Location - map
 - 2. Drainage District boundaries - map
 - 3. Drainage District areas - acres
 - 4. Predominant land uses
 - 5. Watercourse types - map
 - a. Artificial watercourses - miles (yellow)
 - b. Managed watercourses without headwaters - miles (magenta)
 - c. Managed watercourses with headwaters - miles (green)
 - d. Natural watercourses- miles (blue)
 - 6. Drainage infrastructure - map
 - a. Water crossing structures - culverts
 - b. Pump stations
 - c. Tide gates

PART IV: DRAINAGE MAINTENANCE PLAN – Template (continued)

- d. Other - siphon, screw gate
- 7. Fish
 - a. General
 - b. Fish Passage
 - c. Fish Habitat Distribution
 - d. Fish Distribution
- B. Managed Watercourse with Headwaters (Green)
 - 1. Reach Assessment
 - a. Reach descriptions - map
 - b. Reach drainage infrastructure
 - c. Reach drainage maintenance activities
 - d. Reach habitat conditions
 - 1. Riparian characteristics
 - 2. Fish passage barriers
 - 3. Fish passage obstacles
 - 4. Spawning habitat/substrate
 - 5. Typical channel cross section
 - 6. Reach gradient
 - 7. Photos
 - e. Reach fish utilization
 - f. Reach fish habitat improvement opportunities
 - 2. Reach Prescriptions - Drainage and Fish Habitat
 - 3. Implementation Measures
 - a. Implementation Schedule for Habitat Improvement Projects
 - b. Implementation time frames and obligations of the Parties
- C. Other Assessments Within The Drainage District
 - 1. 1418 Assessment
 - 2. Skagit County Water Quality Data
- D. Best Management Practices – District Unique Circumstances

PART V: ISSUANCE OF HYDRAULIC PROJECT APPROVALS (HPA's)

Pertinent to this Agreement, **WDFW** agrees to issue appropriate HPA's as an Addendum to this District Drainage Maintenance Agreement.

PART VI: DISPUTE RESOLUTION

The Parties recognize that a dispute or disagreement may arise in the course of furthering the purpose and intent of this Agreement, as well as in the development and implementation of a Drainage Maintenance Plan between **WDFW** and **DD #3**. In the event of a dispute or disagreement involving the substance or intent of this Agreement, **WDFW** and the duly elected Commissioners of **DD #3** agree to communicate promptly and meet informally to seek a mutually satisfactory resolution. In the event a dispute or disagreement should arise involving the development or implementation of this District Agreement and Plan, the Parties agree the following steps will be taken, in the order set forth below:

- 1) An attempt will be made to resolve the issue at the local level.
- 2) The **Director of WDFW**, or his designee, and a **Commissioner of DD #3** will meet in person.
- 3) The Parties will jointly engage and equitably fund the services of a mutually agreed upon facilitator to assist in resolving the dispute.
- 4) In the event resolution is not achieved using the previous steps, the Parties will be free to pursue other courses of formal action.

In the event of an alleged violation of the terms and provisions of a Hydraulic Project Approval issued in conjunction with this District Drainage Maintenance Agreement, **WDFW** will follow established Enforcement Program policy with regards to the investigation and handling of such incidents.

PART VII: DURATION AND SEVERABILITY

This Agreement shall become effective upon signature by both Parties and will remain in effect until such time as it is dissolved or otherwise revised by mutual consent of both Parties, in consultation with **SRSC**. Either Party may terminate its participation thirty days after providing written notice to the other Party of its intent to do so.

PART VII: DURATION AND SEVERABILITY (continued)

The Parties to this Drainage Maintenance Agreement recognize that each is operating as an independent entity pursuant to the powers, duties and responsibilities vested in each of them under the laws of the State of Washington. This District Agreement and all related HPA's will be reviewed, revised as mutually agreed, and reissued as warranted at intervals of five (5) years from their date of origin. The **SRSC** will be extended an invitation to participate in the review and revision process. The Parties to this District Drainage Maintenance Agreement may mutually consent to reopen the Agreement for review, revision or cancellation at times more frequent than the established five-year intervals due to extenuating circumstances.

Examples of such circumstances are:

- Legislative acts altering the substance of this agreement
- Acts of nature
- Decisions of a Court
- Other factors mutually agreed upon (e.g. new technology, equipment, information)
- New information (e.g. changes in biological conditions that may result in damages to fisheries resources) not available during the development of a Drainage Maintenance Agreement and/or Plan.

No agent, employee, or representative of either Party shall be deemed to be an agent, employee, or representative of any other Party for any purpose relative to this MOU and each Party is solely and entirely responsible for the acts of its agents and employees during the period this Memorandum is in effect.

END OF AGREEMENT

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District Drainage Maintenance Agreement
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ENTERED into this _____ day of _____, 2006 by

BOB EVERITT, REGIONAL DIRECTOR
REGION FOUR – MILL CREEK
DEPARTMENT OF FISH AND WILDLIFE
STATE OF WASHINGTON

AND ON BEHALF OF SKAGIT COUNTY DIKING DISTRICT #3:

_____ COMMISSIONER	_____ COMMISSIONER	_____ COMMISSIONER
_____ DATE	_____ DATE	_____ DATE

Addendum A: Best Management Practices - Skagit Drainage And Fish Initiative MOU

Addendum B: Drainage Maintenance Plan – DIKING DISTRICT 3

Addendum C: Hydraulic Project Approval – DIKING DISTRICT 3

Addendum D: WDFW Emergency Approval Contact Protocols

Addendum E: JARPA Application

Addendum F: SEPA Checklist

Addendum G: SEPA Determination